

Town of Amherst
Zoning Board of Appeals
SPECIAL PERMIT

The Amherst Zoning Board of Appeals hereby grants a Special Permit, ZBA FY2015-00016, to formalize the use of the property as a non-owner occupied two family dwelling (duplex), under Section 3.3211 of the Zoning Bylaw, at 164 Sunset Avenue (Map 11C, Parcel 9, R-G Zoning District), subject to the following conditions:

Ownership and Management

1. By June 1, 2016, the owner shall appear before the Zoning Board of Appeals at a public meeting. The purpose of the public meeting shall be to review compliance with the conditions of the permit. Said meeting shall also allow the Board to determine if any additional periodic reviews are necessary and to determine such future intervals as it deems reasonable.
 - a. In advance of the meeting, the owner shall be responsible for providing notification to abutters in accordance with Town procedures for notice under Chapter 40A, Section 11. This shall include obtaining and mailing Certified List of Abutters and providing a minimum of two week public notice.
2. In the event that the property is no longer managed by Eagle Crest properties, the owner shall appear before the Zoning Board of Appeals at a public meeting. The purpose of the public meeting shall be for the Board to determine that any changes are sufficient to provide comparable property management as described in this decision and the approved Management Plan.
3. Pursuant to Section 3.3211(3), this Special Permit shall lapse upon any change in ownership of the subject property.
4. Prior to the issuance of a Certificate of Occupancy:
 - a. Proof that the Complaint Response Plan has been delivered to abutters shall be provided.
 - b. Contact information for one on-site resident shall be submitted to the Planning Department and Inspection Services, pursuant to Section 3.3211 (3), and updated when the person performing the function moves and/or is succeeded.
5. There shall be an approved Management Plan in place at all times. For this owner and manager, the use shall be operated in accordance with the Management Plan approved on February 12, 2015, including the exhibit describing the function of Eagle Crest, provisions for landscaping, snow removal, and trash storage.
6. The owner shall implement and comply with the provisions of the Complaint Response Plan approved by the Zoning Board of Appeals on February 12, 2015. After the Plan is delivered to abutters, an Affidavit of Compliance shall be filed with the Amherst Planning Department.

7. This property shall be registered and permitted under the Amherst Residential Rental Property Bylaw. Loss or suspension of a rental permit shall constitute a violation of this condition.
8. The owner shall take all reasonable steps, beyond those enumerated in this special permit, to ensure that the property does not constitute a nuisance due to noise as defined under the Unlawful Noise provision of the General Bylaw.
9. Violations of provisions of the Zoning Bylaw or Town Bylaw may constitute evidence of non-compliance with the provisions of this permit.
10. There shall be no upholstered furniture allowed on the exterior of the premises.
11. The lease for each of the units shall contain language and information substantially similar to the submitted lease regarding parties, noise, parking, nuisance house violations, keg licensing, and the sale of alcohol.
12. The exterior of the premises shall be regularly monitored for excessive litter.
13. Trash shall be stored in the enclosure located on the side of the garage. Trash receptacles shall be placed and removed from the side of the road in accordance with the Amherst Board of Health regulations.

Use/Floor Plans

14. Both dwelling units shall be constructed and used in accordance with the following floor plans prepared by J.W. Flower Architect approved by the Zoning Board of Appeals on _____ February 12, 2015:
 - a. Lower Level apartment one, last revised on February 3, 2015.
 - b. Upper Level apartment one, last revised on January 20, 2015.
 - c. Upper Level apartment two, last revised on January 20, 2015.
15. Apartment 1 (basement and first floor) shall be a four bedroom unit and shall not be occupied by more than four unrelated individuals.
16. Apartment 2 shall be a two bedroom unit and shall not be occupied by more than two unrelated individuals.
17. The basement storage area for the owner shall be as shown on the plan and be locked and unavailable to tenants.

Site Plan/Site Improvements

18. Prior to the issuance of a Certificate of Occupancy, the site shall be improved substantially in accordance with the site plan prepared by William Canon, last revised on February 5, 2015 and stamped approved by the Zoning Board of Appeals on February 12, 2015, including but not limited to:
 - a. The enlargement of the paved parking area and striping of spaces.
 - b. The installation of the fence/arbor.
 - c. Installation of new stairway and retaining wall.
 - d. All other site changes shown on the plan.

Elevations

19. The building shall be renovated and used substantially in accordance with the floor plans and elevations prepared by J.W. Flower Architect, and stamped approved by the Zoning Board of Appeals on February 12, 2015 including, but not limited to:
 - a. The use and access to the owner storage space.
 - b. Changes to windows for egress purposes.
 - c. Power washing of the exterior.
 - d. Repair and repainting of wood window trim.
 - e. Repair of all glass, screens, and window muntins.
 - f. Creation of new shed cover for existing electric utilities and consolidation of cable telephone connections.
 - g. Repair of fire escape.
20. The exterior of the premises shall be maintained and kept in good repair. This shall include the timely completion of any and all deferred maintenance (such as broken windows, rotting wood trim) and other such improvements necessary to prevent future deterioration of the building.
21. The property shall be actively monitored for litter and shall be periodically inspected to ensure that the premises are being kept free of trash and litter.

Landscaping

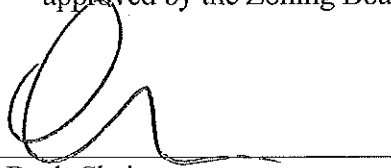
22. Prior to the issuance of a Certificate of Occupancy, the site shall be landscaped substantially in accordance with the Site Plan/Landscape Plan last revised on February 5, 2015 and prepared by William Canon, including but not limited to:
 - a. The installation of plantings and boulders adjacent to the driveway and along the south property line.
 - b. The installation of foundations plantings.
 - c. The construction of a new walkway to the parking area, stairs and retaining wall
 - d. Removal of the fire pit.
 - e. Expansion of the parking area.
 - f. Installation of the yard fence with arbor.
23. Landscaped areas shall be maintained continuously, including removal of weeds and trimming of shrubbery; any dead vegetation shall be replaced with an equivalent or similar species.

Parking

24. Parking shall occur in the spaces designated and shown on the site plan, prepared by William Canon, last revised on February 5, 2015 and stamped approved by the Zoning Board of Appeals on February 12, 2015, and the following:
 - a. There shall be no more than six cars parked at the rear of the property and one car parked in front of the garage.
 - b. No parking shall occur on any unpaved surfaces.
 - c. A parking permit system shall be established and enforced, with a maximum of seven permits issued for vehicles on this property.
 - d. Non-permitted vehicles (i.e. the vehicles of guests) shall not be parked on-site for more than three days out of any seven-day period and shall only be allowed on paved surfaces.

Lighting

25. The exterior lighting shall be designed and installed substantially in accordance with the lighting plan, prepared on the annotated site plan prepared by William Canon and stamped approved by the Zoning Board of Appeals on February 12, 2015.



Eric Beal, Chair
Amherst Zoning Board of Appeals

4/30/15
DATE

Town of Amherst
Zoning Board of Appeals - Special Permit

DECISION

Applicant/Owner: Agnes and James Ting, Trustees
32 North Maple Street, Hadley MA 01035

Date application filed with the Town Clerk: November 14, 2014

Nature of request: For a Special Permit to formalize the use of the property as a non-owner occupied two family dwelling (duplex), under Section 3.3211 of the Zoning Bylaw

Address: 164 Sunset Avenue (Map 11C, Parcel 9, R-G Zoning District)

Legal notice: Published on November 5, 2014 and November 12, 2014 in the Daily Hampshire Gazette and sent to abutters on November 4, 2014

Board members: Eric Beal, Tom Ehrgood, Mark Parent

Staff members: Jeff Bagg, Senior Planner, Rob Morra, Building Commissioner

Submissions:

- Application form filed with the Town Clerk on November 14, 2014
- Cover letter, dated October 29, 2014
- Project Summary, Exhibit A
- Management Plan
- Complaint Response Plan
- Survey/Site Plan, prepared by William Canon, last revised September 18, 2014
- Architectural Plans, including floor plans and elevations, prepared by J.W. Flower, dated September 20, 2014
- Staff email, dated November 4, 2014
- ZBA FY1985-64, BP FY86-38, ZBA FY1986-25, ZBA FY1987-72

Site Visit: November 18, 2014

Eric Beal, Tom Ehrgood, and Mark Parent met the owner, Agnes Ting, and her attorney, Alan Seewald at the property. The Board observed the location of the property on the west side of Sunset Avenue, in close proximity to the UMass campus, and the following:

- The interior of the existing dwelling, including:
 - The basement which included an area formerly used as a kitchen. The room contained a sink, cabinets, counter top and spaces for a stove and refrigerator.
 - The first floor containing two bedrooms, a living room, and kitchen.
 - The second floor containing three or four bedrooms and evidence of a recently removed wall.

- The exterior of the property, including:
 - The façade of the existing building in poor repair, including chipping and peeling paint on the wood window casings, broken garage door panels patched with plywood, generally unkempt lawn area, and a fire pit behind the building.
 - The existing unorganized and uneven driveway to the garage; the existing paved drive and parking area along and around the back of the dwelling; and a paved area behind the northern most portion of the building.
 - An existing row of mature evergreen trees along the north property line and several recently installed arborvitae along the south property line to prevent vehicles from exiting from the driveway on the adjacent property.

Public Hearing: November 20, 2014

The applicant, Agnes Ting, was accompanied by her attorney, Alan Seewald, and architect, Jeffrey Flowers.

Mr. Beal and Mr. Parent disclosed that they had in the past sought legal advice and/or conducted business with attorney Seewald but that these interactions would not affect their ability to make an impartial decision in this matter.

Mr. Beal gave a brief overview of the permitting history of the property, and explained that the request is to formalize the use of the property as two units:

- ZBA FY1985-64 – A Special Permit requested permission to convert the single family dwelling to three units. The request was denied.
 - Building Permit FY86-38 – Issued to “remove window, replace with door and construct exterior stairway”.
- ZBA FY1986-25 - The ZBA heard an appeal of the issuance of a building permit for the installation of a second floor egress door and stairway in the single family dwelling. Ultimately, the building permit was issued to allow the installation of the second floor egress, landing, and staircase. However, the use of the property remained a single family dwelling.
- ZBA FY1987-72 – A Special Permit requested permission to convert the single family dwelling to two units. The request was denied.

Mr. Seewald provided the following summary:

- Ms. Ting purchased the property in 1989. When she purchased the property it was listed by the realtor as a two-family and it was used that way ever since.
- As a result of the Town’s Rental Permit program, it was discovered that the previous owner never secured the required Special Permit for the use of the property as two units. The Assessors Card contains a reference to a 1986 Special Permit as being “granted”. He stated that this statement has caused confusion regarding the legal status of the use of the property. Additionally, he noted that Ms. Ting has been paying taxes on the property as if it is legally two units for the past 14 years.
- This request seeks to formalize the use of the property under the current Zoning Bylaw as a non-owner-occupied duplex. The proposal would reduce the number of bedrooms from eight to six; create proper fire separation between the two units; conduct some deferred maintenance on the exterior of the building; and formalize the rear parking area for six vehicles.

Mr. Flowers provided the following summary of the exterior changes to the site, as shown on the site plan dated September 18, 2014 and elevations dated September 20, 2014:

- The parking area would be widened by 4 to 5 feet along its western edge to provide adequate maneuverability
- The existing paved parking area would be painted to provide a total of six stripped parking spaces behind the building.
- An area of pavement immediately behind the north side of the building would be removed to prevent it from being used as a parking space
- One parking space will be created in the front of the building. A small island will be cut and filled with stone cobble and a series of boulders and landscaping will be installed to prevent vehicles from traversing and parking in the front yard.
- A series of boulders and shrubs will be installed along the south property line to prevent vehicles from traversing from the parking area over to the driveway on the adjacent property to the south. The shrubs have already been planted and boulders would be added prior to occupancy.
- A new concrete walkway will be installed adjacent to the rear parking area that will provide access from the parking area to the wood fire escape and egress on the south side of the house. This area will also include a new block retaining wall and steps along with some additional landscaping.

The Board discussed measures to prevent cars from parking on the lawn. The applicant stated that they are open to considering something that would deter cars from parking on the lawn without being a hindrance to snow removal.

The Board discussed the lighting for the parking area. Mr. Flower indicated that there are existing flood lights mounted on the rear of the building. The Board asked the applicant to provide some type of photometric plan to show that the fixtures will adequately light the parking area.

Mr. Flowers provided the following summary of floor plans and elevations:

- The basement room shown on the existing conditions as a kitchen will be converted to owner storage; accessed by a lockable door. The basement will contain two bedrooms, a bathroom, and an open room labeled basement. Two existing basement windows on the west wall be changed and/or enlarged to be converted to egress windows.
- The first floor will include the conversion of an existing "den" to a bedroom including the installation of a new egress window. A new egress window will also be added in the existing bedroom #4. The basement and first floor will constitute apartment one and will consist of four bedrooms.
- The second floor includes the removal of some interior walls to remove a bedroom and create a new living room/kitchen. A window in each of the two bedrooms will be converted to egress windows.
- All of the new windows will contain muntins to match the existing windows.
- All of the wood trim around the existing windows will be scraped and repainted, the existing vinyl siding will be power washed, and the electrical meter panel will be redone to contain only two meters.

The Board discussed the basement owner storage. The Board discussed the fact that the proposal retains the counters, sink, and plumbing and expressed concern with the potential for that to become a third kitchen again in the future. The applicant stated that a new wall will be built and a lockable door installed to ensure that the room will not be accessed by tenants.

The Board discussed the poor condition of the exterior of the building. Mr. Parent stated that one of the goals is to ensure that the exterior of a rental property is well maintained and appears similar to the other properties in the neighborhood that are owner-occupied. He asked whether anything can be done to consolidate and organize the several wires that attach to the front of the house. Additionally, he asked whether anything can be done to screen or cover the gas meter at the front of the building. Finally, the condition of the garage door was discussed. The architect stated that the broken panels would be replaced. The Board questioned whether that would be enough or whether a new door should be installed.

Mr. Seewald described the Management Plan:

- The Management Plan covers basic trash removal, snow removal, and landscape maintenance.
- Pursuant to the Zoning Bylaw, one of the tenants will be designated as the point of contact.
- A copy of the standard lease will be submitted. With regard to management of noise and parties, etc., the lease will contain a limit of no more than eight guests per unit and any larger gatherings would require approval by the landlord.
- The owner will be the responsible party in the event of a complaint.

The following members of the public spoke regarding the application:

- Connie Gillen, 136 Sunset Avenue, stated that she has lived there since 1969 and that while the potential improvements to the property sound like a welcome relief, it has been the most deteriorated and worst managed property in the neighborhood for years. She noted that they own the Creamery Building at 150 Fearing Street which is across the street. Someone once fired a bb gun from the property at our building breaking a window. There have been many loud, disturbing and unruly parties over the past several years. Some of the behavior at the property has included people urinating from the second floor roof. Other issues have included excessive trash and garage and cars in the yard, drugs, alcohol and other unruly behavior. The barriers for parking may solve some of the problems, but students also need management and good relationships with the owner. She noted that they live next to a fraternity with thirty men; when it's well managed they are a good neighbor, but when it's not it's hell to live next to. The management of this property needs to be hands-on and strict.
- Bob Cyr, 149 Sunset Avenue, stated that he lives immediately across the street. He asked whether the garage is a living space. He stated that it may have been used as living space in the past and definitely has been used as a party room, since it's not used for parking cars. The tenants need to be watched and guided as they are typically young and impressionable. Generally, at the beginning of a semester he goes over there and introduces himself. When there are parties, he has had to go over three times in the middle of the night to ask that things quite down; often resulting in the Police being called. He noted that the conditions being discussed sound good, but unless there are people who will answer a call in the middle of the night and come to the property to deal with issues it won't matter. In terms of parking, there have often been three cars parked in the front lawn/yard because it is the most convenient. The noise issues often start Thursday, Friday, and Saturday. At a certain point in the evening it becomes a big problem. He noted that they used to think that we could not complain until 10:00 or 11:00 p.m. because of the noise ordinance, so we put up with noise until about midnight. The most recent event involved approximately 75 people there at 3:00 a.m. That night, three residents were arrested. Three days before this semester started, people were on the roof with a sign "you beep, we drink", and were urinating from the roof into the front yard.

- Bob Grohmann, 146 Sunset Avenue, stated that he lives one house to the south, next to 156 Sunset which was approved by the ZBA two years ago. He explained that his backyard has a deck from which we hear all the noise from this property. It has been the most disturbing and disruptive property in the neighborhood. The selection of tenants and management of the property has never effectively gotten across the point that this is a neighborhood. The front yard is often a garbage pit, with cars parked in mud in the front yard. The owner has really allowed the tenants to have an absolute disregard for almost anyone around them. He asked the Board to take into account the history of the property, the management, and the police history. In good weather, the residents have historically been at the rear of the property drinking alcohol in smaller numbers and shout and yell during the day with the events often escalating in the evenings. He stated that his kids were told to never go near the house. The noise the profanity was a problem and has been historically a scene fueled by alcohol. The adjacent Eagle Crest property has been an improvement and they have been much more responsive in dealing with issues in that property. He noted that while some of the tenants have sporadically give us their names and contact information, they have never had any contact with the property owner.
- Charles Heffernan, 149 Sunset Avenue, stated live for 35 years. He stated that he has watched for years the steady deterioration of the property. At first it was a single family, but for years it has been a hub for rowdy student behavior. He noted that the most obscene issue was tenants urinating out of the second floor into the front yard – it was like the scene of Animal House. Other consistent issues have been parking all over the lawn, including the rear yard, and trash all over the yard, especially after a party. The owner has allowed the use of the property to occur by lack of oversight and it has amounted to an utter disregard for the neighborhood. The plans look great on paper but they may be useless if it doesn't change the behavior of the tenants.
- Ken Rosenthal, 53 Sunset Avenue, stated that the Board should consider continuing the hearing to gather more information. This is not an application by a new owner for a property that has just been acquired. They have owned it for 25 years and have been operating it illegally and with very little to no oversight, management, or improvements. They should be required to provide a history of complaints and violations since they have owned it, or at least the past six years. Since Inspection Services began monitoring complaints since May 2012 there have been five violations – this needs to be recognized. The same information should be provided for the other properties that the owner has or manages. He noted a fairly recent study prepared by Rolf Karlstrom shows that the proliferation of non-owner occupied properties has resulted in a clear increase in disturbances and nuisance calls and impacts on neighborhoods. He also noted that there are some indications that this property has been used as three units in the past and that this should be confirmed and prohibited in the future. He recommended that the Board should request information from the owner, in the form of a sworn statement as to how many tenants have leased each unit.

The Board discussed the history of complaints and violations and the testimony from the abutters about poor management and behavior at the property. Mr. Beal stated that he is troubled by the testimony but remains open to hearing how it can be improved. Mr. Parent stated that there is a benefit to bringing the property under control through the issuance of a well-conditioned Special Permit. Mr. Ehrgood noted that Section 3.3211 requires the ongoing services of a qualified professional management company or similar provision and does not believe the current owner can herself be considered to satisfy the Section 3.3211 requirement. Mr. Seewald responded by stating that the owner had never been contacted about any of these instances.

The Board requested Town staff to obtain copies of the police logs for the property for the past six years, and noted that this type of information has been relevant in determining the impact of non-owner occupied properties in the past. The Board noted that in addition to the quality and appearance of the property in the neighborhood, ensuring that there is adequate management and oversight of the tenants is required by the Zoning Bylaw. The Board expressed concern with the owner's lack of involvement in the property noting that living in Hadley and working at the University should have involved some basic oversight, maintenance, and attention to this property.

The Board requested the applicant provide the following additional information:

- Revision to the lease to reduce the number of allowed guests and provisions related to noise and party management, trash storage and removal, sale of alcoholic beverages, and use of the roof by tenants.
- Revised site plan showing some method of preventing cars from traversing on the lawn
- Revised elevations to show any structural changes to the windows; consolidation of wires and covering of the gas meter and electrical panel
- Repair or replacement of the garage door
- Enhanced landscape plan for the front of the building
- Lighting photometric plan
- Complaint response plan

Mr. Beal MOVED to continue the public hearing to January 29, 2015. Mr. Ehrgood SECONDED the motion and the Board VOTED unanimously.

Public Hearing: January 29, 2015

The applicant, Anges Ting, was accompanied by her attorney, Alan Seewald, architect, Jeffrey Flowers, and James Beadle from Eagle Crest Property Management.

The following new information was submitted and reviewed:

- Site Plan, prepared by William Canon, last revised on January 21, 2015
- Police Call Log
- Complaint Response Plan
- Email from Ken Rosenthal & Bill Gillen

Mr. Seewald and Mr. Flower review the changes to the floor plans, elevations, and site plan:

- The revised site plan (same as the color coded version) includes the following new information:
 - Additional landscape plantings along the front foundation of the house
 - Additional landscape plantings along the south property line to create a vegetative buffer and deter vehicles from traversing onto the property.
 - The parking area extension area was moved from the west side to the east side of the existing parking area.
 - A plan view and section detail of the proposed retaining wall and steps around the fire escape were added.
 - A new fence and arbor situated to the west of the parking area is proposed as a deterrent to vehicles parking on the lawn area. The site plan shows a detail view of the fence type and material.
 - A color coded version of the site plan, dated January 20, 2015, was provided to highlight the updated landscape plan and to identify the location and efficacy of the exterior lighting.

The Board noted that the site plan contains numerous important notes and descriptions with regard to the specifications and details for the new features. The Site Plan also serves as the proposed landscaping plan and provides for species type, location, and size at planting.

The Board discussed the lighting plan and stated that the exterior lights would be required to be motion sensor and oriented downward.

The Board noted that the concrete fire pit should be removed from the plan and from the property.

Mr. Flower reviewed the newly prepared elevations, which provide the following:

- Description of the proposed new window types and locations.
- A new shed cover over the existing electric meters and gas utilities and proposal to limit the exterior connections for telephone and cable lines.
- A completely re-furbished or replaced garage door.
- A note that the fire escape shall be rebuilt, including resetting the posts and coordination with construction of the new retaining wall.
- All exterior vinyl siding will be power washed and repaired where broken or dislodged, all wood trim scraped, repaired as needed, and painted; all glass, screens, window muntins shall be repaired, all cable wires shall be removed if not used; and all gutters and downspouts be cleaned and re-attached where required.

Mr. Seewald discussed the changes to the management plan:

- The owner has contracted with Eagle Crest property management to undertake tenant selection, contracting with tenants, responding to complaints, and overseeing repairs and other activities.
- In combination with using a professional management company, the proposal seeks to reduce the number of bedrooms from eight to six bedrooms. His client is confident that reducing the number of tenants, contracting with a management company, and upgrading the property will upgrade the type of tenants who will rent the property and will result in a property that is more compatible with the neighborhood.

The Board asked Mr. Beadle about Eagle Crest's management practices and, for example, what they would be able to do upon receiving a complaint of a party or when an issue flares up at midnight?

Mr. Beadle explained that his process involves the following:

- The entire process begins with renting to the correct tenant; this involves careful tenant selection and screening. The selection process starts well in advance of signing a lease.
- They check with UMass to identify whether they are students and review their disciplinary records. They can deny a tenant who has a pending house case or substantial violations. If they have rented elsewhere before, they will speak with their previous landlords.
- It's a proactive approach. Another part of the screening is including the parents as co-signers if the tenant is a student. The tenants and their parents review the lease and must inform us they have read it before the lease is signed.
- In some cases we will check their credit scores and review whether they have any civil or other outstanding violations.
- We typically do two interviews with tenants before they are introduced to the owners of the property. We review our policies and procedures with them and have review a good neighbor policy and pledge.
- For significant violations of the lease parents are notified of it in writing.

Mr. Parent commended Mr. Beadle on his company's handling of the adjacent property to the south, 156 Sunset Avenue, which secured a Special Permit in 2012 to convert to two units. Mr. Beadle acknowledged that the tenants during that process hosted a party of over 200 people that got out of control. He explained that it can often require a full year of managing a property and selecting tenants until the message is clear and understood by the tenants.

The Board discussed section M of the lease which limits the number of guests in each unit to 15 before the property manager is notified. The Board expressed concern with the fact that this could be 30 guests before they are even notified – and that number was too high.

The Board discussed how the lease deals with parking. Section 8 of the lease identified that each unit can park four vehicles. However, on this property the number of parking spaces on-site is only seven. Therefore, this section should be changed as the property will be limited to no more than seven cars on a regular basis.

The Board discussed the complaint response plan. The Board told the applicant that the plan must be revised to state the requirement that the plan must be delivered to property owners within 300 feet.

The Board discussed whether a special permit can be issued with sufficient conditions to ensure that the use of the property as two units will be compatible with the neighborhood. Mr. Beal stated that he believes that the poor management and history of outrageous behavior at this property is the worst he's heard of, having served on the Board for six years. He stated that he believes the property should be used only as a single dwelling under the new management, and that, if there are improvements with the use of the property and its management, then the owner could re-apply for permission to convert it to two units. Mr. Ehrgood and Mr. Parent challenged that position, arguing that the Board should either deny the request or act on what was requested.

Mr. Beal countered his own position by stating that, if the two units were permitted, he would require that the permit expire after one year and require the owner to apply for a new special permit. Mr. Seewald adamantly opposed this suggestion stating that the special permit would be useless if it expires in one year. The owner would not be able to obtain a mortgage for this property with such a condition. He stated that the Board must either deny the request or issue a special permit with conditions. He stated that the permit will have numerous conditions in place to control the use, and the Zoning Enforcement Officer will be able to use the cease and desist process if there are violations of the permit.

Mr. Parent stated that the history of the mismanagement is less important than considering the potential benefits of the new management company and conditions on the site and of the overall use.

The Board, noting the late time of the evening, determined that the hearing should be continued to allow the Board more time to review conditions and deliberate on the proposal. The Board requested that the applicant provide a detailed summary of the tenant selection and management practices described by Eagle Crest to be in writing and incorporated as part of the Management Plan. Mr. Bagg noted that copies of Special Permit conditions granted for similar properties could be provided to the Board for reference in considering conditions.

Mr. Beal MOVED to continue the public hearing to February 12, 2015. Mr. Ehrgood SECONDED the motion and the Board VOTED unanimously.

Public Hearing: February 12, 2015

The applicant, Anges Ting, was accompanied by her attorney, Alan Seewald, and James Beadle from Eagle Crest Property Management.

The following new information was submitted:

- Email from Ken Rosenthal, dated February 12, 2015
- Email from Bill Gillen, dated February 12, 2015
- Revised Complaint Response Plan
- Eagle Crest lease agreement
- Exhibit A to Management Plan (adding Eagle Crest's tenant vetting process)
- Revised Site Plan, prepared by William Cannon, dated February 2, 2015
- Revised lower level plan and elevations, prepared by JW Flower Architect, dated February 3, 2015

The Chair noted that during that the previous hearing some members of the public did not have the opportunity to speak. Accordingly, the Board took the following public comments:

- Maurianne Adams, 14 Beston Street, stated that she had been part of the process to create the Rental Permit Bylaw and she is happy that some of these properties are being found and reviewed. She expressed concern that this property has been a problem with chronic poor management and that there have been significant issues with other properties managed by Eagle Crest. She stated that granting the permit for two units is not the solution and that non-owner occupied properties have continuously had a greater impact on the neighborhood than owner occupied properties.

Mr. Parent noted that during the first hearing the Board heard testimony from neighbors that the adjacent property, 156 Sunset, which was approved by the ZBA and is managed by Eagle Crest, has improved and become less of an issue within the neighborhood.

Mr. Seewald described the changes in the new plans and information:

- The lease was revised to limit the number of guest to 15.
- The Management Plan was amended to add Eagle Crest's tenant vetting policy.
- The Site Plan was revised to show the removal of the fire pit.
- The elevations were revised to show a note for the removal of the third electric meter and a notation for the owners locked storage area in the basement.

The Board discussed whether the permit should expire in a year. Mr. Beal stated that the pattern of poor behavior, lack of oversight, and impact on the neighborhood was worst he had heard in his seven years on the Board. Mr. Beal stated that he believed the permit should expire in a year to allow the Board to reconsider whether the use and the conditions were effective in making the use more compatible and allow the Board to add additional requirements or even deny the use in the future. Mr. Parent and Mr. Ehrgood argued that the Board should either grant the permit with conditions to ensure it is compatible, or deny the request. Mr. Seewald object strongly to expiration after one year on the grounds that such an expiration makes the property owner ineligible for a mortgage and that banks would not be willing to lend with such uncertainty.

Mr. Parent and Mr. Ehrgood observed the permit will require periodic review and an additional review if the management company changes – and that those conditions along with the other conditions about the use are sufficient.

The Board discussed the need for a more frequent review opportunity to ensure that the conditions of the permit are being met and to allow the Board the flexibility to establish future public meetings. The Board identified that the intent of the condition is to allow a future Board to assess and monitor the overall management of the property, compliance with conditions, and to have the flexibility to establish additional review dates and intervals.

The Board discussed the condition limiting the number of unrelated occupants in the two bedroom apartment. The Board noted that this was identified by the owner as the current use of the unit and confirmed that the applicant understood that this unit would be limited to the number of people who may occupy it. A brief discussion about what the term “related” means, and about what would happen if there was a brother and sister and one additional person.

The Board discussed the requirement for a Parking Permit system as a condition of the approval. Mr. Beadle stated that Eagle Crest keeps track of which vehicles belong to which tenants and devote a section to park and how many parking spaces each unit will allocated.

The Board made the following findings under Section 3.211, non-owner occupied duplex:

For a non-owner occupied duplex, one (1) or both dwelling units are rented and neither unit serves as the principal residence of one or more owner(s) of the property. No dwelling unit under this use category may be occupied by a total of more than four (4) unrelated persons. The Board finds that this is criteria is met.

The Special Permit Granting Authority shall require the ongoing services of a qualified professional property management company, the presence of an on-site resident manager, or similar provision for proper management of the rental use as a condition of approval. The Board finds that the proposal includes and requires that the owner contract with Eagle Crest property management to provide services for proper management of the two rental units, as described in the submitted documents and pursuant to the conditions of this permit.

1. *Name(s) and contact information shall be provided for the owner, any responsible rental property management entity, and at least one on-site resident.* The Board finds that the submitted Compliant Response Plan identifies the contact information for the owner of the property and the qualified professional property management company. The Plan is required to be provided to abutters. A condition of the permit requires that the name and contact information be submitted on a form to the Planning Department and kept on file. A new form is required to be submitted within 20 days of occupancy any time there is a change in this listed on-site resident.

2. *A management plan as defined in the Rules and Regulations adopted by the Special Permit Granting Authority, shall be included as an integral part of any application. Also included shall be a Response Plan describing the concrete steps to be taken by the property owner or management in response to complaints about the operation of the use or the conduct of the tenants.* The Board finds the combination of Exhibit A, which describes the responsibilities of Eagle Crest, the submitted Management Plan, and Complaint Response Plan, that this criteria is met.

3. *In the R-G and R-VC Districts, a Special Permit granted under this section shall lapse upon any change in ownership of the subject property, and the Special Permit Granting Authority may impose a review of compliance with Special Permit conditions at such intervals as it deems reasonable.* The Board finds that this will be a condition of this Special Permit.

The Board found under Article 7 of the Zoning Bylaw, that:

7.0000 - *Two (2) parking spaces for each dwelling unit.* The proposal provides six parking spaces, which is greater than two parking spaces per unit.

7.0001 - *Parking spaces for cars or similar vehicles shall be on a paved surface such as concrete, bituminous asphalt, masonry pavers, oil and stone, gravel, trap rock, or a similar material (see Section 7.101);* 7.101- *Paving: For the purposes of this bylaw, a paved parking surface shall be considered to be one which has a prepared subgrade and compacted gravel base with a minimum total 12 inch depth, appropriate grading and drainage, and which is surfaced with a minimum 2 inch top coat of concrete, asphalt, masonry pavers, oil and stone, gravel, trap rock, or similar material, as approved or modified by the Town Engineer. To the extent feasible, permeable or porous paving shall be employed in new construction or site renovations or improvements.* The proposal includes a small expansion of the existing paved parking area. The site plan notes that the expanded area will be built with a 12 inch base and top coat of blacktop to match the existing paved surface.

7.104- *Dimensions, Marking & Delineation - Parking areas shall be clearly delineated and shall be provided with a permanent dust-free surface and adequate drainage.* The Board can find that the existence of a blacktop parking area is sufficient to delineate the parking area. Drainage will sheet flow off to the east in the same manner as the existing parking area.

Each parking space shall be at least 9 feet x 18 feet in size, and all parking areas must have adequate access and maneuvering areas. In all parking areas of five (5) or more parking spaces, individual spaces shall be painted, marked or otherwise delineated in a manner sufficient to visibly identify said spaces. As shown on the site plan, the proposed spaces will be 9 feet wide by 18 feet in size and marked with painted lines. With the expansion of the paved surface, 18 feet of maneuvering space will be provided.

7.112 -*Screening: parking areas with 5 or more spaces shall provide effective screening of the parking area from adjacent streets or properties. Such screening may be accomplished by: depressions in grade 3 feet or more; a hedge or wall; or any type of appropriate natural or artificial permanent division. Any required screening barrier shall not be less than 3 feet high. Screening shall not be located to obstruct driver visions so as to impair safety at intersections or driveway entrances or exits.* The Board finds that the proposal provides new landscaping along the south property line. The purpose of this landscaping is not as much about screening, but rather will serve to prevent vehicles from traversing the property line and out the adjacent driveway. A significant row of arbor vitae exists on the subject property along the north property line and provide screening from the property to the north.

7.105- Lighting: adequate lighting shall be provided for all parking areas of 5 spaces or more if these areas are to be used at night. All exterior site lighting associated with parking areas shall be downcast and shall be directed or shielded to eliminate light trespass onto any street or abutting property and to eliminate direct or reflected glare perceptible to persons on any street or abutting property and sufficient to reduce a viewer's ability to see. Adjacent properties shall be protected from light intrusion through the use of cut-off luminaries, light shields, lowered height of light poles, screening or similar solutions. All exterior site lighting shall be kept extinguished outside of normal hours of use, except for lighting necessary for site security and the safety of employees and visitors, which lighting shall be activated and controlled through motion sensors or similar technology. The Board finds that the approved lighting plan provides for the installation of two exterior flood lights to light the rear parking area. Said lights are to be arranged to be downcast and set on motion sensors.

The Board found under Section 10.38 of the Zoning Bylaw, Specific Findings required of all Special Permits, that:

10.380 & 10.381 - The proposal is suitably located in the neighborhood in which it is proposed and/or the total Town, as deemed appropriate by the Special Permit Granting Authority; The proposal is compatible with existing Uses and other Uses permitted by right in the same District. The proposal is located along Northampton Road (Route 9), a main thoroughfare through Town and is located in close proximity to downtown, Amherst College, and the University of Massachusetts. The Board finds that two dwelling units are appropriate in the General Residence (R-G) Zoning District, the purpose of which is to "provide for residential neighborhoods of medium to high density in area both near the Town Center and between the University and the Town Center...". The proposal is suitably located in the neighborhood as it is in close proximity to the University, is located adjacent to an existing non-owner occupied duplex (156 Sunset), within 300 feet of an existing fraternity, and is amongst other owner and non-owner occupied single family dwellings. The conditions of the permit, such as requiring the services of a professional property management company, the addition of substantial landscaping, more organized and formal parking area, downcast lighting, and a periodic review of the use by the Board make the use more suitable for the neighborhood. The physical condition of the property, both the building and grounds, will be substantially upgraded the appearance of the property and will be professionally managed by Eagle Crest. Additionally, the use will be reviewed on a continuous basis as deemed necessary to ensure it remains a compatible use in the future.

10.382, 10.383 & 10.385 & 10.387- The proposal would not constitute a nuisance due to air and water pollution, flood, noise, odor, dust, vibration, lights, or visually offensive structures or site features; The proposal would not be a substantial inconvenience or hazard to abutters, vehicles or pedestrians; The proposal reasonably protects the adjoining premises against detrimental or offensive uses on the site, including air and water pollution, flood, noise, odor, dust, vibration, lights or visually offensive structures or site features; The proposal provides convenient and safe vehicular pedestrian movement within the site, and in relation to adjacent streets, property or improvements. The Board finds that the management plan, compliant response plan, and conditions of the permit will mitigate, prevent, respond to and/or eliminate potential nuisances. Specifically, the conditions will result in an improvement to both the safety of the interior of the building through the upgrade of fire separation and other Building Code requirements, the exterior of the building will be improved by power washing, repairing of wood trim and broken garage doors, improvement and more organized parking area, installation of additional landscaping, and the requirement to engage the services of a professional property management company.

10.384 - Adequate and appropriate facilities would be provided for the proper operation of the proposed use. The new construction will be built in accordance with the applicable building codes, including means of egress and other safety requirements. The management plan identifies adequate areas for the storage of waste and recycling within the enclosure on the side of the garage. The site plan provides adequate parking areas, walkways, and additional landscaping.

10.386 - The proposal ensures that it is in conformance with the Parking and Sign regulations (Articles 7 and 8, respectively) of this Bylaw. The Board made findings under Article 7 and determined that no signs were proposed as part of this proposal.

10.389 - The proposal provides adequate methods of disposal and/or storage for sewage, refuse, recyclables, and other wastes resulting from the uses permitted or permissible on the site, and methods of drainage for surface water. The property is on Town water and sewer and no issues related to drainage were identified from the small expansion of the existing paved area.

10.392 - The proposal provides adequate landscaping, including the screening of adjacent residential uses, provision of street trees, landscape islands in the parking lot and a landscape buffer along the street frontage. The Board finds that the proposal provides adequate landscaping to ensure that the two unit rental property will be more in keeping with the appearance of other residential properties in the neighborhood. The additional landscaping related to this permit is necessary to enhance the appearance of the property and conditions of the permit require that the landscaping be continuously maintained.

10.393 - The proposal provides protection of adjacent properties by minimizing the intrusion of lighting, including parking lot and exterior lighting, through use of cut-off luminaires, light shields, lowered height of light poles, screening, or similar solutions. Except for architectural and interior-lit signs, all exterior site lighting shall be downcast and shall be directed or shielded to eliminate light trespass onto any street or abutting property and to eliminate direct or reflected glare perceptible to persons on any street or abutting property and sufficient to reduce a viewer's ability to see. The Board found that the approved lighting plan provides for two new double spot lights to be installed, arranged to be downcast and shall be set on motion sensors.

10.396 - The proposal provides screening for storage areas, loading docks, dumpsters, rooftop equipment, utility buildings and similar features. The Board finds that the trash and recycling associated with the dwelling units will be located and stored in the enclosure on the side of the garage and will not be visible from the road and that it will be placed and removed at the side of the road before and after pickup.

10.398- The proposal is in harmony with the general purpose and intent of this Bylaw, and the goals of the Master Plan. The Board finds that the proposal provides rental housing where a shortage of the same is documented. The conditions of the permit shall mitigate the potential impact of two dwelling units while the design conforms to the design criteria related to suitability and size relative to the neighborhood. The Board finds that two units are reasonable use of the land as it complies with all the required dimensional requirements and will allow the enhancement of a property which has been in poor repair and poorly managed for over 10 years. The proposal is in harmony with the goals of the master plan to encourage: "medium density development" and "a greater mix of housing types, sizes and prices serving a wider range of income levels than is currently available throughout Amherst. The proposal also increases "infill development and the location of housing developments near services".

Zoning Board Decision

Mr. Beal MOVED to approve the application with conditions. Mr. Parent seconded the motion.

For all of the reasons stated above, the Board VOTED unanimously to grant a Special Permit, ZBA FY2015-00016, to formalize the use of the property as a non-owner occupied two family dwelling (duplex), under Section 3.3211 of the Zoning Bylaw, at 164 Sunset Avenue (Map 11C, Parcel 9, R-G Zoning District), with conditions.


ERIC BEAL


TOM EHRCOOD


MARK PARENT

FILED THIS 1st day of May, 2015 at 11:59 A.M.
in the office of the Amherst Town Clerk Chandra J. Burger

TWENTY-DAY APPEAL period expires, May 21 2015.

NOTICE OF DECISION mailed this 4th day of May, 2015
to the attached list of addresses by Jeffrey R. Begg, for the Board.

COPY OF NO APPEAL issued this _____ day of _____, 2015.

NOTICE OF PERMIT or Variance filed this _____ day of _____, 2015,
in the Hampshire County Registry of Deeds.

THE COMMONWEALTH OF MASSACHUSETTS
AMHERST

City or Town
NOTICE OF SPECIAL PERMIT
Special Permit
(General Laws Chapter 40A)

Notice is hereby given that a Special Permit has been granted

To Agnes and James Ting Trustees

Address 32 North Maple Street

City or Town Hadley, MA 01035

Identify Land Affected: 164 Sunset Avenue
(Map 11C, Parcel 9, R-G Zoning District)

By the **Town of Amherst Zoning Board of Appeals** affecting the rights of the owner
with respect to the use of the premises on

164 Sunset Avenue Amherst
Street City or Town

The record of title standing in the name of
Agnes and James Ting, Trustees
Name of Owner

Whose address is 32 North Hadley St Hadley MA 01035
Street City or Town State Zip Code

By a deed duly recorded in the
Hampshire County Registry of Deeds: Book 8545 Page 347

or

Hampshire Registry District of the Land Court, Certificate No. _____,
Book _____, Page _____

The decision of said Board is on file, with the papers, in ZBA FY2015-00016
In the office of the Town Clerk Sandra J. Burgess

Certified this _____ day of _____

Board of Appeals:

(Board of Appeals)

(Board of Appeals)

Chairman

Clerk

_____ at _____ o'clock and _____ minutes _____ m.

Received and entered with the Register of Deeds in the County of Hampshire
Book _____ Page _____

ATTEST _____

Register of Deeds
Notice to be recorded by Land Owner

BOARD OF APPEALS
AMHERST, MASSACHUSETTS
RECORD OF APPEALS AND DECISION RENDERED

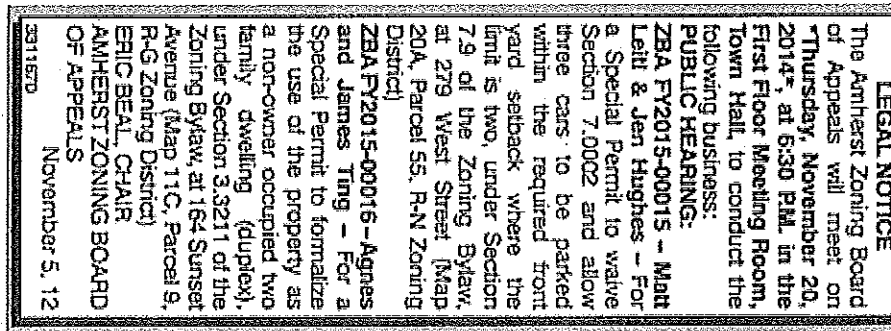
Petition of Agnes and James Ting, Trustees

For A Special Permit to formalize the use of the property as a non-owner occupied two family dwelling (duplex), under Section 3.3211 of the Zoning Bylaw

On the premises of 164 Sunset Avenue
At or on Map 11C, Parcel 9, R-G Zoning District

NOTICE of hearing as follows mailed (date) November 4, 2014
to attached list of addresses and published in the Daily Hampshire Gazette
dated November 5, 2014 and November 12, 2014

Hearing date and place November 20, 2014, January 29, 2015, February 12, 2015
(Town Hall)



SITTING BOARD and VOTE TAKEN:

To grant a Special Permit, ZBA FY2015-00016, to formalize the use of the property as a non-owner occupied two family dwelling (duplex), under Section 3.3211 of the Zoning Bylaw, at 164 Sunset Avenue (Map 11C, Parcel 9, R-G Zoning District), subject to conditions

Eric Beal – Yes Tom Ehrgood – Yes Mark Parent – Yes

DECISION: APPROVED with conditions